

February 8, 2018

Mr. Nick Nicholson  
Advantage Homes, Inc.  
8015 Shore Road  
Baltimore, Maryland 21222

Re: Northview Road 8204  
Baltimore, Maryland 21222  
Critical Area Administrative Variance  
DEPS Tracking Number: 07-17-2602

Dear Mr. Nicholson:

The Department of Environmental Protection and Sustainability (DEPS) has received your variance request, which proposes to construct a new, open wood deck, attached to the dwelling and extending 10 feet waterward, eight feet of which will be within 25 feet of mean high water (MHW), impacting 254 square feet (sf) of the Critical Area buffer. The resulting distance between the deck and MHW is 17.5 feet.

The subject, waterfront property comprises 4,606 sf, is located in the Dundalk section of Baltimore County, and is within an Intensely Developed (IDA) Area and Modified Buffer Area of the Chesapeake Bay Critical Area. It is bounded to the east, south and west by developed, residential lots of equivalent sizes, and to the north by Bullneck Creek. Due to the small size of the lot, the 100-foot Critical Area buffer encompasses the entire site, constraining its development. The dwelling, constructed in 1945, was recently destroyed by fire. It is being reconstructed under a separate permit, within the same general footprint, no closer to the water than the original dwelling, which was 25 feet from MHW.

The Director of DEPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The entire property lies within the Critical Area buffer. The approximately 30'X44' dwelling is situated on a lot that is approximately 100'X50'. The proposed deck cannot be constructed on the street side of the dwelling due to zoning setback requirements and a driveway designed to accommodate a car. The proposed deck is designed to extend 10 feet waterward of the dwelling, 17.5 feet from mean high water, in lieu of the required 25 feet. After consideration of alternatives described as part of the variance application, the selected alternative shown on the submitted plan

results in the least impacts to the buffer. This is due to the existing, sloped grade on the waterside of the dwelling, which would require grading and retaining walls to create a level yard area. Literal enforcement of the regulations would constitute an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. The replacement dwelling is being constructed 25 feet from mean high water, where the original dwelling was located. The applicant would be deprived of the ability to construct an open wood deck on the property and the use of a practical yard, both of which are enjoyed on similar properties in the area, if there were literal enforcement of the buffer requirements. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The construction of an open wood deck within 25 feet of mean high water on a similar property with similar constraints would not be denied, if all other criteria for a Critical Area Variance were met. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. Site work or construction for the proposed deck has not started on the property, and the applicant is not requesting this variance due to conditions on neighboring properties. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The construction of the deck will have no direct impacts to tidal waters, tidal wetlands, nontidal wetlands or tributary streams (fish habitat) since no activities are proposed in these resources. In addition, the Critical Area IDA land use designation requirements are not applicable in this case because the deck is not considered an impervious surface. Water quality for buffer impacts may be enhanced since mitigation planting of trees and/or shrubs within the buffer, and other mitigative measures will serve to improve water quality management. Therefore, the construction of the deck within 25 feet of the water will result in minimal adverse effects to plants or wildlife, and water quality impacts can be mitigated to improve buffer functions. Granting of this variance will be in harmony with the spirit and intent of the Critical Area Regulations. Therefore, the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by mitigative measures and full implementation of an approved Critical Area Management Plan. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

Mr. Nick Nicholson  
8204 Northview Road  
Critical Area Administrative Variance  
DEPS Tracking #07-17-2602  
February 8, 2018  
Page 3

1. Mitigation for the 254 square feet of buffer disturbance shall be provided at a ratio of 3:1 (762 square feet). The applicant must install native trees and/or shrubs, to the extent practicable within the Critical Area buffer onsite for planting credit. The remaining mitigation shall be addressed by the payment of a fee-in-lieu of planting in the amount of \$1.50 per sf. This shall be accomplished in accordance with an approved Critical Area Buffer Management Plan, consistent with COMAR 27.01.09.01, which must be approved prior to the issuance of any permit. The planting shall be completed prior to approval of the Use and Occupancy Certificate for the dwelling by this Department. The fee-in-lieu must be received by this Department prior to the issuance of any permit.
2. Add the following note to all plans for this project, including the Critical Area Management Plan: "A Critical Area Variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Baltimore County Code, Article 33, Environmental Protection and Sustainability, Title 2, Chesapeake Bay Critical Areas Protection for the purposes of impacting 254 square feet of the Critical Area buffer, within 25 feet of mean high water, for the construction of an open wood deck. Variance approval conditions include the planting of native vegetation and the payment of a fee-in-lieu of planting for mitigation. These conditions were placed on this variance to reduce water quality impacts."

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article, Section 8-1808 (d))6(ii).

Please sign the statement below, and return the original copy of this letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this correspondence, please contact Thomas Panzarella at 410-887-3980.

Sincerely,

David V. Lykens  
Deputy Director

DVL:tcp

Mr. Nick Nicholson  
8204 Northview Road  
Critical Area Administrative Variance  
DEPS Tracking #07-17-2602  
February 8, 2018  
Page 4

c: Ms. Claudia Jones, Critical Area Commission

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I/We have read and agree to implement the above requirements to bring my/our property, located at 8204 Northview Road, into compliance with the Chesapeake Bay Critical Area regulations.

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Signature of Owner(s)

Date

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Printed Name(s) of Owner(s)

Date